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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,835	09/09/2003	Thurman B. Hicks	9144C	1761

7590 07/06/2004
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EXAMINER

BENNETT, GEORGE B

ART UNIT PAPER NUMBER

2859

DATE MAILED: 07/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/657,835	Applicant(s) HICKS, THURMAN B.	
	Examiner G. Bradley Bennett	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-20 is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gianotta.

3. Gianotta discloses the invention as claimed where: **24** is a base plate for engaging the stud; **50** are flanges for engaging first and second ends of an electrical box; since the flanges are adjustable, they may be set in a stationary location; and **26** and **46** are flanges for engaging a stud.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gianotta in view of Wheeler, Sr. et al..

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6. Gianotta discloses the invention substantially as claimed. However, Gianotta does not disclose the handle as claimed. Wheeler, Sr. et al. discloses how an adjustable handle may be used with an electrical box locator for the purpose of rendering the tool easier to use. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a handle as taught by Wheeler, Sr. et al. in conjunction with the device of Gianotta for the purpose of making the Gianotta device easier to use.

7. Claims 5, 7, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gianotta in view of Gehen, Sr.

8. Gianotta discloses the invention substantially as claimed. However, Gianotta does not disclose the tensioning mechanism as claimed. Gehen, Sr. discloses how a tensioning mechanism may be used with an electrical box locator for the purpose of automatically tensioning a flange against a utility box. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a tensioning mechanism as taught by Gehen, Sr. in conjunction with the device of Gianotta for the purpose of automatically tensioning the adjustable flanges of Gianotta.

9. Claims 6, 8, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gianotta and Gehen, Sr. in further view of Wheeler, Sr. et al..

10. Gianotta and Gehen, Sr. discloses the invention substantially as claimed. However, neither Gianotta nor Gehen, Sr. discloses the handle as claimed. Wheeler, Sr. et al. discloses how an adjustable handle may be used with an electrical box locator for the purpose of rendering the tool easier to use. Therefore, it would have been

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obvious to one of ordinary skill in the art at the time the invention was made to use a handle as taught by Wheeler, Sr. et al. in conjunction with the device of Gianotta for the purpose of making the Gianotta device easier to use.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

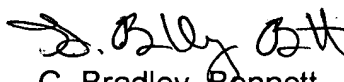
12. Claims 13-20 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to G. Bradley Bennett whose telephone number is 571.272.2237. The examiner can normally be reached on M-TH 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on 571.272.2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



G. Bradley Bennett
Primary Examiner
Art Unit 2859

**G. BRADLEY BENNETT
PRIMARY EXAMINER**

gbb
1 JUL 2004